IN SENATE OF THE UNITED STATES.

July 25, 1848.

Submitted, and ordered to be printed.

Mr. Downs made the following

REPORT:

[To accompany bill S. No. 319.]

The Committee on Private Land Claims, to whom the bill to facilitate the entry of pre-emptive claims was referred, respectfully report:

The first section of the bill has in view two objects:

1. To authorize the settler to relinquish his pre-emptive right from the United States and allow the State to locate on it for the purpose and on the condition of obtaining a pre-emption from the State, if he deems it more advantageous to him.

2. To authorize him to obtain State scrip from the State and locate it on his pre-emptive claim, instead of paying for it in cash.

The committee can see no legal or reasonable objection to the course proposed in the first clause. It is not a violation of the principle adopted in the pre-emptive laws generally, that the claim cannot be sold before the entry is made, which was evidently intended to prevent speculation at the expense of the settlers. He, the settler, does not sell in this case; he does not make a contract with an individual that can be used as a cloak for speculation, he merely makes an arrangement with the State to secure his claim in a manner which he thinks will be more advantageous to him. The donation to the State of the 500,000 acres of land certainly vested this land in the State, and she had a right to dispose of it, under the conditions specified in the grant, in the same manner as the United States could dispose of it before.

This is the language of the law:

"The selections in all the said States to be made within their limits, respectively, *in such manner as the legislature thereof shall direct;* and located in parcels conformable to sectional divisions and subdivisions of not less than 320 acres in one location on any public land, except such as may be reserved from sale by any law of Congress, or proclamation of the President of the United States, which location may be made at any time after the lands of the

United States in said States, respectively, shall have been surveyed, or according to existing laws." "The lands herein granted shall not be disposed of at a price less than $1 25 per acre until otherwise authorized by a law of the United States." (8 and 9 sec., 4th September, 1841, 5 Stat. at Large, p. 455.)

It may be well doubted whether the expression "lands reserved from sale by law" applies to land covered by pre-emption claims after the settler has abandoned or relinquished his right. Is not the land in the same situation as if he had suffered the time to elapse within which he had a right to enter the land by way of pre-emption? How the idea originated that a pre-emptor cannot waive or relinqush his right the committee are at a loss to conceive, especially when he is to be benefitted by it. To say that after such a relinquishment he would be still entitled to his pre-emption, would be equivalent to depriving him of all control over it and leaving it a mere usufruct or right of occupation, and nothing more. The law, certainly, never was constructed for such a purpose. The right to convey or transfer to another is of the very essence of property, and one cannot exist in perfection without the other. So far from the United States government objecting to this arrangement, it ought to be considered most advantageous to it, as well as to the State and to the settler. The proceeding in such a case is more simple and convenient than that of the entry of an ordinary pre-emption. The settler need do nothing but file his written relinquishment to the tract on which he resides, and then the State locates on it. Here the transaction with the United States government ceases.

The proof on the claim is made to the State authorities; and the United States, by this simple and convenient transaction, has satisfied two obligations by one act. It has satisfied the donation to the State *pro tanto*, and, at the same time, the pre-emption right to the settler. Whenever it can be done conveniently, it is much better, and more in harmony with the spirit of our institutions, that the State should deal directly with her citizens, than the United States. She is nearer, and can better know their wants and their interest, and what will promote their interests. If the United States was to derive no revenue from the public lands, would she retain the administration of them any longer? This is the only object. But for this, the power never would have been granted to her. It is, in its nature, restrictive of State rights—an infringement of the State sovereignty, and ought not to exist, except in cases of necessity. There is no necessity for it in this case; for, to the extent of the donation to each State, the right and title of the United States is as completely divested as if the whole of the land in the State had been ceded to the State. If the whole in a State, instead of 500,000, had been a donation to the State, would the United States have any longer held control over it? Certainly not. How, then, can she over what is donated? There are too peculiar reasons in Louisiana, and perhaps other States, why the construction of the law which we have contended for should be adopted. There are in that State many large claims originating with the Spanish government, that have never been

finally confirmed. But some of them have had strong claims to confirmation, have been favorably reported on by committees and public officers, and sometimes confirmatory acts have passed one or the other House of Congress; and sometimes opinions of courts, not in the last resort, have been given favorable to them; and the principles of many cases confirmed in Missouri and Florida have been suffered to apply to them.

These considerations have given the public just cause to believe that the titles were good and would be ultimately confirmed; and many purchases have been made in good faith and valuable improvements made on the land. A State law has been passed allowing to such purchasers in good faith, if the land should be found, on a final decision, to belong to the United States and the State location on it confirmed, a right of pre-emption for the amount of his purchase, to include his improvements, and not to exceed a certain quantity—(large enough for a plantation.) This course, so just and so proper, and so important to the purchaser in good faith and settlers, would be broken up by the construction of the law that should deny the right to the State, with the consent of the setler, to locate on his claim and then allow him a pre-emption under the State. Surely this would be a rigor and a strictness which has never before been extended to settlers and *bona fide* purchasers, and would be, to say the least of it, not very respectful or courteous to the authorities of the State; and yet such a construction has been given to the law as it now exists, and hence the necessity of the bill herewith reported and recommended.

The second point is still more clear than the first. Under the law quoted making these donations to the State, it has been decided at the General Land Office that a State may issue scrip for the land donated instead of actually locating it herself; and this scrip is received at the land office for ordinary entries of land, without any objection, instead of cash; but it is refused in the entry of pre-emption claims. Why is this distinction made? The committee have looked in vain into the laws on the subject and can find no provision on which to base it; and the only reason assigned is, that most of the States are now made for pre-emption claims, and this would diminish the cash received by the United States.

In the first place, the committee cannot approve of public officers exercising a discretion properly vested in the legislature and not in the executive department of the government. Congress, in passing these laws, must have foreseen this consequence, and it was for them to provide against it if it was not to be allowed. They did not deem it expedient to do so, and no executive officer has a right to go beyond the law. Who ever supposed that Congress could give to the States millions of acres of land, and yet that the sales should not be diminished by it? But this evil, if it was one, which is not admitted, is limited in extent, and temporary in duration. Four States have authorized such scrip, much of it has already been absorbed, and in a short time it would all be taken up, if received, for all entries; and, after that, nothing but cash would be received. Besides, is it just or fair that a debtor should

refuse to receive his own acknowledged obligations in payments made to him? These State donations are obligations of the government, due and payable, and she has no right to say she will not take them up in payment for pre-emption claims, but will receive cash only.

The second section of the bill, which has been added to it by the committee, is only extending to pre-emptors, in claims for which suits have been brought against the United States, the same rights extended by law unequally to actual purchasers or confirmees in such claims, and would no doubt have been extended to them in the first instance, if any permanent pre-emption law, such as now exist, had then been in existence. The committee, therefore, recommend that the bill as amended pass.